CLAUSE H.21 - CONTRACTOR COMPENSATION, BENEFITS AND PENSION

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system self-assessment plan consistent with 48 CFR 31.205-6, "Compensation for personal services." The Contractor's compensation system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR 31.205-6 and DEAR 970.3102-05-6, Compensation for Personal Services.

Until DOE has approved the Contractor's compensation system, the Contractor shall submit the following to the Contracting Officer for a determination of cost reimbursement under the contract:

(a) Any additional Compensation System self-assessment data that may be needed to validate and approve the Compensation System.

(b) Any proposed major compensation program design changes prior to implementation.

(c) Annual Compensation Increase Plan (CIP).

(d) Individual compensation actions, as required in the contract including initial and proposed changes to base salary and or payments under an Executive Incentive Compensation Plan submitted on the Application for Contractor Compensation Approval, DOE F 3220.5.

(e) Any proposed establishment of an incentive compensation plan.

The Contractor shall provide the Contracting Officer with the following reports:

(a) Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.

(b) At the time of contract award and upon any change thereafter, a list of the top five most highly compensated executives and their salaries.

(c) Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS), compensation and benefits module.

(d) A Self-Assessment of the total compensation program using mutually agreed to compensation system performance measures that include performance targets in the following areas: customer, financial, internal business, and learning and growth.

DOE will conduct periodic appraisals of Contractor performance with respect to compensation system implementation. Such appraisals when approved by the Contracting Officer, will be conducted by either DOE validation of contractor self assessments of compensation system performance, or third party expert review.

(a) Benefit Programs

The Contractor shall implement an employee benefits program that supports at a reasonable cost the effective recruitment and retention of highly skilled workforce at the Department facility. No presumption of allowability will exist when the Contractor implements changes to its existing employee benefits program until the Contracting Officer makes a determination of cost reimbursement for reasonable changes to the program.

(1) Submit to the Contracting Officer for a determination of cost reimbursement a periodic evaluation of the Contractor's Employee Benefits Program based on two professionally recognized performance measure:

(i) An Employee Benefits Value Study (ben-val) Measure every two years which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value study does not address post-retirement benefits (PRB) other than pension, the Contractor shall provide separate PRB cost and plan design data comparison with external benchmarks for nationally recognized and Contracting Officer approved survey sources.

(ii) An Employee Benefits Cost Survey Comparison (cost survey) Method every year that analyzes the Contractor's employee benefits cost on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Chamber of Commerce (CoC) Annual Employee Benefits Cost Survey or other Contracting Officer approved broad based national survey.

(2) When net benefit value and/or per capita cost exceed the comparator group by more than 5 percent, submit corrective action plans to achieve a net benefit value and per capita cost not to exceed the comparator group by more than 5 percent.

(3) When required by the Contracting Officer, submit an analysis of the specific plan costs that are above the per capita cost range and a corrective action

plan to achieve conformance with a Contracting Officer directed per capita cost range.

(4) Implement corrective action plans determined to be reimbursable by the Contracting Officer to align employee benefit programs with the target in paragraph (a).

(5) Annually submit the Report of Contractor Expenditures for Employee Supplemental Compensation.

(b) Retirement Plans

(1) Employees of the Brookhaven National Laboratory (BNL) may participate in the defined contribution retirement plans as described in items (i) and (ii) below. With respect to the plans, the Contractor and the Department of Energy (DOE) agree as follows:

The DOE will reimburse the Contractor for necessary and reasonable costs involved in implementing, administering, by the Contractor and Service providers and funding these approved retirement plans. Any change in plan benefits and/or costs not required to maintain qualification under Section 401 of the Internal Revenue Code will require Contracting Officer approval. The Contractor will notify the DOE of any change required solely to maintain qualification under Section 401 of the Internal Revenue Code.

Provisions of this section are subject to successful negotiations with the Program's service providers including, but not limited to investment organizations, insurance companies, etc. Further, these provisions will be subject to and superseded by any law or regulation with which they might conflict.

While it is expected that this Plan will continue indefinitely, the BSA Board of Directors reserves the right to modify or discontinue them at any time, provided, however, that such modification or discontinuance shall not be applicable to this contract unless approved by the Department of Energy. Any discontinuance or modification of the Plan shall not affect the benefits accrued by participants prior to the date of discontinuance or modification.

(i) "Regular Retirement Plan." BSA will provide its eligible employees with a defined contribution type retirement plan, with BSA contributions being made at the participants' election to one or more of the following investment organizations: Teachers Insurance and Annuity Association (TIAA) and the College Retirement Equities Fund

(CREF), Fidelity Investment Service Company, and the Vanguard Group.

Effective 1-1-07, employees who were not participating in the plan on December 31, 2006 will be enrolled upon the earlier of (a) attainment of age 21 and the completion of one year of continuous service or (b) the attainment of age 30 and the completion of 6 months of continuous service, and is not a part-time or temporary employee. Employees who work on a part-time, temporary or irregular basis must complete 1000 hours of service each year to be credited with a year of service. Prior service credit for participation shall be given for comparable eligible service with Associated Universities Incorporated (AUI) and for employees who transfer directly to BSA from Research Foundation of State University of New York (RFSUNY), the University of Stony Brook (USB), and Battelle Memorial Institute (BMI).

BSA shall contribute for each participant an amount equal to 10 percent of base pay.

BSA shall make its contributions to TIAA and/or CREF, Fidelity Investments, or Vanguard in such percentages as the participant may elect. The percentages of the combined sum may be changed by the participant on a monthly basis.

Contracts issued by the investment organizations as part of the Retirement Plan shall be issued to the participant. The rights and benefits of each participant shall be those set forth in the contracts.

The contracts of each employee whose employment by BSA is terminated (other than by death) shall remain in force. Participants who terminate employment from BSA are entitled to have the investment organization repurchase their contracts in accordance with the rules and regulations in effect at the time of termination.

Upon retirement, a number of annuity settlements are available to the employee, as described in the various investment organizations' booklets. In addition, a retirement option of a lump-sum settlement up to the maximum provided by the contract provisions of the various investment organizations is permitted.

(ii) "Voluntary 401(k) Retirement Plan." Employees may elect to make voluntary contributions to one or more of the 401(k) program options, to the extent permitted by law, in order to supplement the retirement income available to them from Social Security and from the BSA

Regular Retirement Plan. Options include: a 401(k) individual accounts with Teachers Insurance Annuity Association (TIAA) and/or the College Retirement Equities Fund (CREF); and/or a 401(k) accounts invested in regulated investment companies (mutual funds). These voluntary retirement income programs, and the manner in which employee funds may be automatically transmitted to them by the Payroll Office, are described below.

Contributions by Salary Reduction. The 409(a)plan allow employees to elect a deferred income tax option rather than, or in addition to, the salary deduction provision. The option allows for the deferral of income tax payments on the employee's contributions until after the elected deferral period. Under this option, each employee may elect to have base salary reduced by an amount that is not more than the maximum permitted by the Internal Revenue Code. At the election of the participant, the amount of the reduction shall be transmitted by BSA, on behalf of the employee, either to a TIAA and/or CREF retirement annuity, and/or to an eligible investment account, in such proportion as the participant may designate.

TIAA and/or CREF retirement annuities may be purchased through the deferred income tax option as well as through the salary deduction program. The 401(k) plan allows employees who elect to make voluntary contributions through payroll deduction to invest such funds in TIAA and/or CREF retirement annuities, in such percentages as the participant may elect, to the maximum percent permitted by the Internal Revenue Code. These 401(k) percentages may be changed by the participant on a monthly basis. Contributions to TIAA/CREF retirement annuities purchased through payroll deduction will be in separate accounts from annuities purchased under the BSA Retirement Plan.

(2) The Contractor shall submit to the DOE copies of each IRS Form 5500 and accompanying schedules, an annual accounting report and other information concerning the defined contribution plans which the Contracting Officer may require. The annual accounting report shall include a development of aggregate forfeitures and all plan data for individuals generating those forfeitures.

Prior to the adoption of any changes to a pension plan, the Contractor shall submit the information required below, as applicable, to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are consistent with the Contractor's documented Human Resources total compensation and benefits program and are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

(A) For proposed changes to pension plans and pension plan funding, an analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value; and,

(B) The Contractor shall obtain the advance written approval of the Contracting Officer for any non-statutory pension plan changes that may increase costs or liabilities, and any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide DOE with an analysis of the impact of special programs on the actuarial accrued liabilities of the pension plan, and on relative benefit value, if applicable.

The Contractor shall not terminate any DOE reimbursed benefit plan without the DOE's approval. It is the intention of the DOE not to entertain any enhancements in these programs after the Contractor announces the intention not to renew the Contract.

Cost reimbursement for PRBs is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service, **not less than 5 years,** under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.

(c) Post-Contract Responsibilities for Pension and Benefit Plans

(1) Upon contract termination, the individual employee accounts in the defined contribution plans shall be handled in accordance with the provisions of the Employee Retirement Income Security Act of 1974 (ERISA) as amended, and the accounts will vest in accordance with the applicable vesting schedule. The Contractor shall inform the plan participants of (a) their right to roll these accounts over into a successor contractor's qualified deferred compensation plan, if such a plan exists, and (b) the consequences of failing to do so, and (c) other applicable rights based on regulatory requirements.

(2) If this contract expires or terminates without a follow-on contract, notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this contract, the following actions shall occur:

(i) The Contractor shall continue as plan sponsor of all existing and follow-on pension and welfare benefit plans covering site personnel with responsibility for management and administration of the plans, as directed by DOE, at DOE's sole discretion.

(ii) In accordance with DOE-approved Contractor welfare benefit plans, the Contractor shall provide benefit continuation on a funding basis acceptable to DOE.

(iii) The DOE, subject to the availability of appropriated funds, will make available to the Contractor in a timely manner sufficient funds so that the Contractor has no out-of-pocket expenditures from corporate funds to cover all liabilities incurred under this Contract, relating to Contracting Officer-approved Retirement Plans.

(iv) During the final 12 months of this contract, the Contracting Officer shall provide written direction regarding post-contract responsibilities for pension and welfare benefit plans.

(v) Notwithstanding termination for convenience or default, the contract may be extended as appropriate for purposes deemed necessary by the Contracting Officer, including, but not limited to, obligating funds to pay the Contractor for costs incurred for the Contractor's existing and, if applicable, follow-on, site pension and welfare benefit plans. Such costs shall continue to be allowable in accordance with applicable laws and regulations.

(vi) Pension plan contributions, plan asset management costs, and plan administration costs will continue to be allowable and fully reimbursed under this contract, on a funding basis acceptable to DOE, unless other arrangements have been approved by the Contracting Officer.

(d) Severance pay benefits are not payable to an employee under this contract if the employee:

i. Resigns (unless approved for voluntary layoff),

ii. Is offered employment with a successor/replacement Contractor,

iii. Is offered employment with a parent or affiliated company, or

iv. Is discharged for cause.